

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

HERON COVE ASSOCIATION, et al.

Plaintiffs,
v.
Case No.: 24-cv-11473
Hon. Thomas L. Ludington
Mag. Judge Patricia T. Morris

GLADWIN COUNTY BOARD OF
COMMISSIONERS and FOUR
LAKES TASK FORCE,

Defendants.

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DEFENDANT GLADWIN COUNTY BOARD OF COMMISSIONERS'
EX PARTE MOTION TO EXCEED PAGE LIMIT

Defendant GLADWIN COUNTY BOARD OF COMMISSIONERS, by and
through its attorneys, CUMMINGS, McCLOREY, DAVIS & ACHO, PLC, hereby

moves this Court for leave to exceed the 25-page limit of Local Rule 7.1(d)(3)(A) for its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) by four (4) additional pages. Exceeding the limit is necessary to fully and sufficiently address the multiple claims and issues in this case:

1. The Complaint filed in this case asserts multiple claims under both state and federal law. It has been filed by dozens of Plaintiffs against multiple Defendants.
2. Specifically, this lawsuit arises out of a special assessment to fund the acquisition, repair, and reconstruction of the dams surrounding the Secord, Smallwood, Wixom, and Sanford Lakes following the collapse of the Edenville Dam in 2020.
3. Plaintiffs allege the special assessment has resulted in an Inverse Condemnation under the Michigan Constitution (Count I), a Taking under the United States Constitution (Count II), and a violation of Procedural Due Process under both the Michigan and United States Constitutions (Counts III and IV).
4. Prior to filing this action, Plaintiffs had filed a separate action against these Defendants in the Midland County Circuit Court appealing the special assessment, and raising the same claims, issues, and arguments they raise in this Complaint.
5. The State Court rendered an Opinion and Order dismissing the appeal and denying the relief sought by Plaintiffs.

6. It is Defendant's position that the Complaint is subject to dismissal under Rule 12 because Plaintiffs failed to state a valid claim upon which any relief may be granted, because certain plaintiffs lack standing, and on the basis of res judicata and collateral estoppel.

7. As such, in this motion, Defendant must address not only the Complaint counts, the review standards under Rule 8 and Rule 12, and articulate and analyze the law related to the asserted claims, it must also address the prior court's rulings, and analyze the law related to res judicata and collateral estoppel.

8. To adequately address all of these arguments, Defense Counsel has found four (4) additional pages to be necessary above the 25 pages allotted in Local Rule 7.1(d)(3)(A), for a total of 29 pages.

9. Defendant sought concurrence in the relief requested in this motion from Plaintiff. Concurrence was obtained.

WHEREFORE, Defendant GLADWIN COUNTY BOARD OF COMMISSIONERS respectfully requests this Honorable Court enter an Order allowing it to file a brief regarding its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) that is 29 pages long.

Respectfully Submitted,

Cummings, McClorey, Davis & Acho, PLC

By: /s/ TIMOTHY S. FERRAND
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Dated: July 3, 2024

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: none.

Cummings, McClorey, Davis & Acho, PLC

By: /s/ Timothy S. Ferrand